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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10626559	7/25/2003	TOYOSHIMA ET AL.	0445-0339P

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**EXAMINER**

Laura C. Hill

ART UNIT	PAPER
3761	20070423

**DATE MAILED:**

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

**Notice of Allowability**

Application No.

10/626,559

Applicant(s)

TOYOSHIMA ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Claim amendments and Remarks dated 16 Feb 2007.
2. ☒ The allowed claim(s) is/are 1, 4, 5 and 7.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material         | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other _____   |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see pages 6-12, filed 16 February 2007, with respect to the rejection under Alemany et al. '423, Breitkopt '008 and Kievit et al. '595 have been fully considered and are persuasive. The rejection of the claims has been withdrawn.

### ***Claim Amendments***

Support for the claim amendments dated 16 February 2007 can be found at least on page 5, lines 22-23, page 6, lines 14-16 and lines 5-6, figure 2, and page 7, lines 15-17.

### ***Reasons for Allowance***

Claims 1, 4-5 and 7 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the art of record does not disclose or fairly suggest a disposable diaper having a) a waist elastic fixed between a topsheet and backsheet in a stretched state; b) extensible side part fixed between two sheets of a main body in a stretched state; c) a fastening tape basal part fixed between two sheets of a main body; d) saturated absorption capacity ratio; e) absorbent member flexural stiffness; f) a tensile load in the range claimed along with the other claimed elements.

The following is the closest prior art:

**Alemany et al. (US 5,234,423)** discloses a disposable diaper with a) waist elastic 35 disposed between topsheet 24 and backsheet 26 (column 22, lines 22-35) but *in an uncontracted state* (column 23, lines 15-18 and 29-31); b) extensible ears/side parts

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fixed between topsheet and backsheet of a main body (column 4, lines 7-6 of Buell US 4,081,301 incorporated by reference at column 40, line 20; c) fastening tapes 92 *joined* to backsheet 26 (column 28, lines 45-51 and column 29, lines 25-28) rather than sandwiched between two sheets of a main body; e, f) varying flexural stiffness and tensile loads but no motivation to modify them in the claimed ranges for improved article performance. There is no motivation to modify the fastening tapes to have a basal part fixed between two sheets in a stretched condition since Alemany teaches the topsheet, backsheet, elastic side panel, and any other components are secured together in an uncontracted/unstretched condition (column 40, lines 42-45).

**Garfinkel (US 3,616,798)** discloses a disposable diaper with elastic leg straps disposed between two sheets of a main body on lateral ends (column 2, lines 16-19 and figure 1) but there is no motivation to modify the leg straps of Garfinkel to be fastening tapes in a stretched condition as claimed.

**Miller et al. (US 4,904,249)** discloses a disposable absorbent article with basal part of straps 130 fixed between two sheets of a main body and having *button* fasteners 132 through slits 120 (figure 1) but no motivation to modify these straps to be fastening *tapes* along with all of the other claimed elements for ease of wear in a standing or sitting position.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C Hill  
Examiner  
Art Unit 3761

LCH

*LCH*

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

*Tatyana*